IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.31851 of 1998

Dated: 28-09-2007

Between:

Shaik Madina, s/o late Moula.

... Petitioner

and

1. The Visakhapatnam Urban Development Authority, Visakhapatnam, rep. by its Vice Chairman, VUDA Complex, Visakhapatnam and another.

... Respondents

ORDER:

This writ petition is filed seeking a *mandamus* to declare the illegal and highhanded attempt of respondents through their officials/staff members on 11-11-1998 and also their threat and proclamation to continue the same for dispossessing the petitioner from his land of 708 square yards or 591-980 square meters in Survey No.15/1 (part) of Mulagada village of Visakhapatnam District without due process of law,
as arbitrary, capricious and violative of Articles 21 and 300(A) of the Constitution of India and consequently direct respondents not to resort to such illegal and highhanded attempts in future.

2. Petitioner states that one Thonangi Simhachalam and Thonangi Sanyasi Rao are brothers and sons of Thonangi Appalaswamy and Mutyalamma and their joint family had property in an extent of about

Ac.0-70 cents in Mulagada village. After the death of Appalaswamy, the said property devolved upon Simhachalam, Sanyasi Rao and their mother Mutyalamma. The said Mutyalamma died *intestate* in or about 1977, leaving behind her sons Simhachalam and Sanyasi Rao as her heirs, therefore, they got Ac.0-35 cents each, out of the entire extent of Ac.0-70 cents. He further states that thereafter he purchased an extent of 708 square yards or 591-980 square meters in Sy.No.15/1 (part) of Mulagada village of Visakhapatnam District from Simhachalam, under a registered sale deed, dated 25-06-1984 for a valid consideration of Rs.14,160/-. Ever since the date of purchase, he has been in peaceful possession and enjoyment of the said land. He purchased the same after obtaining necessary permission from second respondent–Special Officer, vide proceedings No.26/941/B4(A) dated 31-05-1984 and the same is specifically mentioned in the registered sale deed. The said permission certificate was produced before the registering authority and pursuant to which the sale deed was duly registered. Be that as it may, the officials of respondents along with their staff came to his land on 11-11-1998 and started surveying the land without his permission and without issuing any notice to him and they also threatened him that they would dispossess him from the property in question. Hence, he filed the present writ petition.

3. A counter affidavit is filed on behalf of second respondent denying the averments mentioned in the affidavit filed in support of the writ petition. In the counter affidavit it is mainly contended that the property in question is part of the self-acquired property of Smt. Thonangi Mutyalamma and she filed declaration under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, 'the Act') specifying her holdings in the urban area. Pursuant to the same, proceedings under the Act were initiated. Meanwhile, petitioner purchased an extent of 786 square yards from out of the property situated in S.No.15/1 part of Mulagada village from T. Simhachalam through registered document dated 25-06-1984 by obtaining clearance under Section 26 of the Act in SR.No.26/941/84, dated 31-05-1984 fraudulently. During the course of lands inspection in 1989, a show cause notice was issued to the original owner for fraudulently obtaining permission under Section 26 of the Act. On receipt of the said notice, the sons of Mutyalamma have preferred an appeal before the Commissioner of Land Reforms & Urban Land Ceiling, Andhra

Pradesh, Hyderabad. The Commissioner of Land Reforms & Urban Land Ceiling in his Proceedings No.AUC1/238/89, dated 24-04-1990 dismissed the appeal observing that the owner has not given any response to the show-cause. Later on, Simhachalam and others i.e. the legal heirs of Mutyalamma filed an application under Section 20(1) (a) of the Act on
31-05-1980 before this (second) respondent for grant of exemption for the surplus land measuring 1623 square meters claiming as agricultural land. After due enquiry it was recommended for rejection vide Lr.Rc.No.761/86/B2, dated 01-10-1986. Further, the Government in their Memo No.510/UCI (2)/87-9, dated 28-08-1998 rejected the request of the applicants for grant of exemption and directed this office to take necessary action. It is further contended that the land in S.No.15/1 of Mulagada village was treated as self-acquired property of Smt. Thonangi Mutyalamma under the provisions of the Act, and as such, an extent of 1500 square meters of vacant land was allowed to be retained by her within the ceiling limit in S.No.15/1A of Mulagada village in this office final statement under Section 9 of the Act in CC.No.1191/76, dated
11-08-1977**.** Against the said order of second respondent, Mutyalamma has not raised any objections. It is a fact that after receipt of rejection orders in Govt. Memo No.510/UC.I (2)/87-9, dated 28-08-1998,
the respondent officials have started surveying the schedule land for taking possession of land. Since the scheduled land lying in S.No.15/1B of Mulagada village is vested with the State Government free from all encumbrances by virtue of publication under Section 10(3) of the Act in the Andhra Pradesh State Official Gazette dated 10-04-1980 and since writ petitioner has no *locus standi*, there is no necessity to issue any notice to him before entering into the schedule land by the respondent officials.

4. Heard learned counsel for the parties.

5. Learned counsel for petitioner mainly contended that though the property in question is the ancestral property of Mutyalamma and her sons and the said Mutyalamma has specifically stated in her declaration under Section 6(1) of the Act that the property in question is the ancestral property, respondent authorities initiated proceedings against her under the Act and thereafter on their own interpretation of

the representation dated 24-06-1977 submitted by her, have come to the conclusion that it is her self-acquired property and arbitrarily declared the excess holding; therefore, respondent authorities have no right to evict the petitioner,
who is the purchaser of part of the share allotted to his vendor Simhachalam, and their action in trying to evict the petitioner from out of the property in question, without issuing any notice or initiating proceedings under any Statute is violative of principles of natural justice.

6. Learned Government Pleader for Revenue while reiterating various averments made in the counter affidavit vehemently contended that as Thonangi Mutyalamma filed a declaration under Section 6(1) of the Act declaring that an extent of Ac.0-75 cents in S.No.15/1 part of Mulagada village is her self-acquired property, respondent authorities have initiated proceedings under the Act against her and provisionally declared her as surplus landholder of 1623 square meters in S.No.15/1 part of Mulagada village and thereafter after following due process of law declared her as surplus landholder. He further contended that respondent authorities,
on coming to know that petitioner purchased the property in question from one of the sons of Mutyalamma by fraudulently obtaining permission under Section 26 of the Act, have issued show-cause notices to the original owner and thereafter, after the dismissal of appeal preferred by the sons of original owner, Mutyalamma before the Commissioner of Land Reforms and Urban Land Ceiling, Andhra Pradesh, Hyderabad on
24-04-1990 holding that the original owner has not given any response to the show-cause notice, they proceeded against the petitioner. He further contended that since the property in question is vested with the State Government and petitioner has no *locus standi,* there is no necessity to issue any notice to him before entering into the schedule land by the officials of the respondents.

7. In view of the rival contentions raised on either side, it is apt to refer the representation dated 24-06-1977 submitted by Thonangi Mutyalamma and the office note prepared by the respondent officials in this regard.
The said representation reads as follows, in the same verbatim---

> “To:
> Sri J.M. Girglani, I.A.S.

Special Officer and Competent Authority,
Urban Land Ceiling,
Visakhapatnam

I, Thonangi Mutyalamma wife of Appalaswamy Yeduruvanipalem, hamlet of Mulagada, Visakhapatnam – 530 012 beg to submit the following objections to the statement sent by you for acquiring my building site.

I have no objection for the acquisiting but I have never inform you that the site proposed to be acquired is a building site, in case that reasonable compensation is given to me. The prevailing rate per square yard in the locality is Rs.25/- and more and I may be given at the rate of at least Rs.25/- per square yard.

Compensation may be granted and paid to me before you acquire and take possession of the site.

Mark of Thonangi Mutyalamma "

whereas the office note prepared by the officials of the respondents in this regard, reads as follows—

"Submitted:

The declarant in his letter dated 24-06-1977 has stated that she has no objection to surrender the excess land as shown in the 8(1) statement in case of payment of reasonable compensation to her. She has requested for the payment of land value to be surrendered at Rs.25/- per square yard.

Hence, there is no objection from the declarant on the aspect of surrender of the excess land but she requested for payment of reasonable compensation. Final statement u/S. 9 may be issued."

8. Further Thonangi Mutyalamma in the Annexure–A enclosed to her declaration under Section 6(1) of the Act to the Land Ceiling Authority,
mentioned in column No.9 that the property in question is ancestral one and in column No.14, which is meant for "Names and address of other persons, if any, having interest in such lands and the nature of such interest", it is mentioned as 1) Thonangi Mutyalamma 2) Thonangi Simhachalam and 3) Thonangi Sanyasi Rao.

9. From the above it is clear that Mutyalamma in Annexure–A

enclosed to her declaration under Section 6(1) of the Act had specifically mentioned at the relevant columns that the property in question is the ancestral one. At the same time, it also reveals about the persons,
who are interested in the said property. If that being the case, merely on the ground that the said Mutyalamma has given her consent to give the land subject to the condition of paying Rs.25/- per square yard, it is not known as to how the respondent authorities have prepared such an office note by arriving at a conclusion that it is the self-acquired property of Mutyalamma. Further, from a perusal of the affidavit filed in support of the writ petition and a copy of the sale deed in respect of the property in question, it is to be seen that the registering authority, after satisfying that the property is not the assigned land and that valid permission was obtained from the Urban Land Ceiling Officer, registered the sale deed.

10. Though various contentions have been raised by learned Government Pleader including the contentions that the property in question is the self acquired property of Mutyalamma and that petitioner purchased the property in question from the son of Mutyalamma by fraudulently obtaining permission vide proceedings No.26/941/84(A) dated 31-05-1984 from second respondent under Section 26 of the Act,
the respondents have not produced any reliable documentary evidence to prove the said contentions. Therefore, I am not inclined to accept the contentions raised by learned Government Pleader.

11. Having regard to the aforesaid facts and circumstances, this Court is of the view that mere consent by Mutyalamma to give the land subject to the condition of payment of Rs.25/- per square yard cannot be basis
for the respondent authorities to arrive at the conclusion that it is the self acquired property of Mutyalamma. Further, this Court is also of the view that the contention of respondents that petitioner purchased the property in question from the son of Mutyalamma by fraudulently obtaining permission from second respondent and as such they can as well proceed against the petitioner herein in respect of the property in question, without issuing any notice and initiating proceedings under any Statute, cannot be countenanced. Therefore, respondent authorities have no right to dispossess the petitioner from the property in question, without issuing any notice and initiating proceedings

under any Statute and without following due process of law.

12. Accordingly, the writ petition is allowed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.28-09-2007
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